

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	09/284,009	LEWIS ET AL.
	Examiner Celine X Qian Ph.D.	Art Unit 1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 12/8/04.
2.  The allowed claim(s) is/are 87,89-93,101,104,111-116 and 120-125.
3.  The drawings filed on 05 April 1999 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of
 Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

### **Statement of Reasons for Allowance**

The following is an examiner's statement of reasons for allowance:

The prior art teaches monocyte-macrophage cells transfected with vectors comprising genes that enables the cells to be superior in both cytotoxicity and of stimulation of the immune system comparing to wild type monocyte-macrophages (Haddada et al. US 6,210,963, column 2), wherein the promoter that directs the expression of the exogenous gene is regulatable (Column 4, 3<sup>rd</sup> paragraph, last sentence). This reference also teaches that said monocyte-macrophage cells can be used therapeutically such as treating cancer. However, Haddada et al. do not teach a mononuclear phagocyte comprises a vector, wherein said regulatable element is a hypoxia regulatable element, an ischemic regulatable element and a stress regulatable element. The prior art also teaches constructs comprising tissue specific promoter and hypoxia regulated enhancer element for therapeutic use *in vivo* (Webster et al., US 5,834,306).

The claimed invention is drawn to a mononuclear phagocyte modified to comprise at least one regulatable element operably linked to at least one nucleotide sequence of interest, wherein said regulatable element is capable of regulating expression of said NOI in a tumour site and is selected from a hypoxia regulatable element, an ischemic regulatable element and a stress regulatable element. The claims are also drawn to a composition comprising said mononuclear phagocyte, a construct comprising the regulatable element and is coupled to a binding agent selective binds to a mononuclear phagocyte, and a method of internalizing a regulatable element by exposing said construct to said mononuclear phagocyte. Although the teaching of the prior art is close to the claimed invention, there is no motivation to combine the references to render the claimed invention obvious. Therefore, the claims are free of prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celine X Qian Ph.D. whose telephone number is 571-272-0777. The examiner can normally be reached on 9:30-6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Celine X Qian Ph.D.  
Examiner  
Art Unit 1636

*Dave*  
DAVE TRONG NGUYEN  
PRIMARY EXAMINER